

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION

GARY JOHNSON,

v.

CACTUS FAMILY FARMS, LLC, and
CAROLINE HICKS, Individually and in her
Corporate Capacity

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CIVIL ACTION NO. 3:18-cv-3002

NOTICE OF REMOVAL OF DEFENDANTS

TO THE HONORABLE UNITED STATES DISTRICT COURT:

COMES NOW Cactus Family Farms, LLC and Caroline Hicks, Defendants herein, and file this Notice of Removal (“Notice”) of this suit from the Iowa District Court for Hamilton County, Iowa, Cause No. LACV029389, to the United States District Court for the Northern District of Iowa, Central Division pursuant to 28 U.S.C. §§1441(c), 1446 and 1331, and respectfully shows the Court as follows:

**I.
INTRODUCTION**

1. Defendant Cactus Family Farms, LLC is a Texas Limited Liability Company authorized to do business in the State of Iowa (“Cactus”). *See* Exhibit “A”.
2. Defendant Caroline Hicks is an individual resident of the State of Iowa (“Hicks”).
3. On or about December 14, 2017, Plaintiff filed his original *Petition at Law and Jury Demand*, asserting claims of unlawful discrimination pursuant to the Americans’ with Disabilities Act (“ADA”), Family Medical Leave Act (“FMLA”) and the Iowa Civil Rights Act (“ICRA”) in the Iowa State District Court for Hamilton County. This case was assigned Cause

No. LACV029389, and styled as “*Gary Johnson v. Cactus Family Feeders, LLC*”, (the “Hamilton County Suit”).

4. Defendants were served in the Hamilton County Suit on or about December 19, 2017. Thus, Defendants timely file this notice of removal within the 30-day time period required by 28 U.S.C. §§1446(b) & (b)(1).

5. Defendants have not filed an answer in the Hamilton County Suit.

II. GROUNDS FOR REMOVAL

6. Defendant timely files this Notice of Removal pursuant to 28 U.S.C. §§1441(a), 1446, and 1331. Specifically, removal of the Hamilton County Suit to this District and Division is proper because this Court has federal question jurisdiction in accordance with 28 U.S.C. §1331 over Plaintiff’s pleaded federal discrimination law causes of action, as well as, supplemental jurisdiction pursuant to 28 USC § 1367(a) over his cause of action pleaded pursuant to the ICRA.

A. Citizenship of the Parties

7. At the time of the filing suit and at the time of removal:
- a. Plaintiff, Gary Johnson, is a citizen of Prescott, Adams County, Iowa;
 - b. Defendant, Cactus Family Farms, LLC is a Texas Limited Liability Company authorized to do business in the State of Iowa; and
 - c. Defendant, Caroline Hicks, is an individual citizen of the State of Iowa.

B. Removal is proper on Account of this Court’s Federal Question and Supplemental Jurisdiction

8. Removal of this suit is proper under 28 U.S.C. §1331 because Plaintiff alleges claims pursuant to the FMLA, codified in pertinent part at 29 USC § 2615(a)(1) and ADA,

codified in pertinent part at 42 USC §§ 12112(a) and 12203(a). *See e.g. Harris v. CRST Van Expedited, Inc.*, 2014 WL 6686569 (Nov. 26, 2014)(unpublished)(“The district courts shall have original jurisdiction of all civil cases arising under the Constitution, laws or treaties of the United States”).

9. This Court has supplemental jurisdiction over Plaintiff’s ICRA claim pursuant to 28 USC § 1367(a) because his IRCA claim is completely intertwined and closely connected to his federal statutory claims such that they “form part of the same case or controversy under Article III of the United States Constitution.” *Id.* at p.*1; *citing*, 28 USC § 1367(a).

D. Consent to Removal of Defendants

10. Both Defendants consent to the removal of the case to this District and Division, as reflected by filing this Notice of Removal. 28 U.S.C. §1446(b)(2)(A).

E. Hamilton County Suit court records are attached

11. True and correct certified copies of all pleadings, process, orders, and other filings in the Hamilton County Suit are attached to this Notice as Exhibit B, as required by 28 U.S.C. §§ 1446(a) and 1449.

F. Venue in this District and Division is Proper

12. Venue in this District and Division is proper under 28 U.S.C. §1441(a) because the Hamilton County, Iowa court (the state court where the state suit has been pending) is located in this District and Division. Plaintiff alleges in Plaintiff’s Original Petition that Plaintiff’s claims and causes of action with regard to Plaintiff’s property in question occurred in Hamilton County, Iowa.

G. Notice of Notice of Removal and Notice of Filing Notice of Removal

13. Pursuant to 28 U.S.C. §1446(d), Defendants will promptly file a copy of this Notice of Removal and a Notice of Filing of Notice of Removal with the district clerk of the Hamilton County, Iowa, the state court where the suit has been pending, and will give written notice thereof to all adverse parties.

14. Plaintiff demanded a jury trial in the Hamilton County Case.

**III
NON-WAIVER OF DEFENSES**

15. By removing this action from the Iowa District Court for Hamilton County, Defendants do not waive any defenses available to them.

16. By removing this action from the Iowa District Court for Hamilton County, Defendants do not admit any of the allegations in the Hamilton County Suit.

**IV
CONCLUSION**

17. For the reasons stated above, removal of the Hamilton County Suit to this District and Division is proper under 28 U.S.C. §§ 1441, 1446, 1331, and 1367(a) because this Court has federal question and supplemental jurisdiction over all matters in controversy, and is between citizens of different States.

WHEREFORE, PREMISES CONSIDERED, Defendants request that the Court remove the action to the United States District Court for the Northern District of Iowa, Central Division.

Respectfully submitted,

/s/ Ann Holden Kendell

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 5th day of January, 2018, a copy of the foregoing was served electronically on parties who receive electronic notice through CM/ECF, including counsel for Plaintiff:

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/s/ Lynda Shoemaker

Lynda Shoemaker